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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 PUGET SOUNDKEEPER ALLIANCE,)
10 v.) No. 2:15-cv-01460-MJP
11 Plaintiff,)
12 BUSE TIMBER & SALES, INC.,) CONSENT DECREE
13 Defendant.)
14

15
16 I. STIPULATIONS

17 Plaintiff Puget Soundkeeper Alliance sent a sixty-day notice of intent to sue letter to
18 Defendant Buse Timber & Sales, Inc. on or about June 25, 2015, and filed a complaint on September
19 11, 2015, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, relating to discharges
20 of stormwater from Buse's facility in Everett, Washington, and seeking declaratory and injunctive
21 relief, civil penalties and attorneys' fees and costs.

22 Puget Soundkeeper Alliance recognizes that Buse is an employee-owned company and an
23 important member of the local community, and unable to afford a substantial penalty payment.

24 Puget Soundkeeper Alliance and Buse agree that settlement of this matter is in the best
25 interest of the parties and the public, and that entry of this Consent Decree is the most appropriate
26 means of resolving this action.

27 Puget Soundkeeper Alliance and Buse stipulate to the entry of this Consent Decree without
28

1 trial, adjudication, or admission of any issues of fact or law regarding Puget Soundkeeper Alliance's
2 claims or allegations set forth in its complaint and its sixty-day notice.

3 DATED this 10th day of May, 2016.

4 MONTGOMERY PURDUE
5 BLANKINSHIP & AUSTIN PLLC

SMITH & LOWNEY PLLC

6 By _____
7 Michael E. Gossler, WSBA #11044
8 Attorneys for Defendant Buse Timber &
Sales, Inc.

By _____
Richard A. Smith, WSBA #21788
Meredith A. Crafton, WSBA #46558
Attorneys for Plaintiff Puget Soundkeeper
Alliance

10 BUSE TIMBER & SALES, INC.

11 PUGET SOUNDKEEPER ALLIANCE

12 By _____
13 Tom Parks
Buse Timber & Sales, Inc., President

By _____
Chris Wilke
Puget Soundkeeper Alliance, Executive
Director

15 **II. ORDER AND DECREE**

16 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.

17 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,
18 ADJUDGES, and DECREES as follows:

- 20 1. This Court has jurisdiction over the parties and subject matter of this action.
- 21 2. Each signatory for the parties certifies for that party that he or she is authorized to
22 enter into the agreements set forth below.
- 23 3. This Consent Decree applies to and binds the parties and their successors and assigns.
- 25 4. This Consent Decree and any injunctive relief ordered within will apply to the
26 operation, oversight, or both by Buse at its facility located at or about 3812 28th Pl. NE, Everett,
27 WA 98201-8602 ("Facility"), which is subject to National Pollutant Discharge Elimination
28 System Permit No. WAR000097 ("NPDES permit").

29 CONSENT DECREE - 2
CASE No. 2:15-cv-01460-MJP

1 5. This Consent Decree is a full and complete settlement and release of all the claims in
2 the complaint, the sixty-day notice and all other claims known and unknown, contingent or
3 otherwise, for any acts or omissions, existing as of the date of entry of this Consent Decree, that
4 could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from operations of the
5 Facility against Buse, its subsidiaries, employees, agents, successors and assigns. These claims are
6 released and dismissed with prejudice.

8 6. This Consent Decree is a settlement of disputed facts and law.

9 7. Buse agrees to the following terms and conditions in full and complete satisfaction of
10 all the claims covered by this Consent Decree:

12 a. Buse will comply fully with all conditions of its NPDES Permit and any
13 successor, modified, or replacement permit authorizing discharges of stormwater
14 associated with industrial activity from the Facility. Maintaining full compliance
15 with the ISGP includes but is not limited to fully implementing Ecology's "Draft
16 2013 Implementation Manual for Log Yards" and incorporating the manual as well
17 as its best management practices (BMPs) into the Facility's SWPPP.

19 b. Within thirty days of the entry of this Consent Decree, Buse will update its
20 SWPPP to include:

22 i. A description of wash pad and containment vault as well as a prohibition
23 on vehicle washing anywhere except new wash pad;

25 ii. A site map that represents true site conditions which omits SW grassy
26 area that is not used for industrial activity and which does not drain or
27 connect to any industrial area.

28 iii. Proper descriptions of site surfaces as paved, unpaved or vegetated.

iv. All other required BMPs in this Consent Decree or applicable from the ISGP.

c. Within thirty days of the entry of this Consent Decree, Buse will remove the accumulation of wood debris resulting from the delivery and offloading of logs on, around, and immediately west of its log float beach on Union Slough, and to dispose of this waste properly with other mill wood waste.

d. Buse will conduct log float beach and ramp, activity in accordance with Buse's Aquatic Lease with Washington State Department of Natural Resources and maintain the ramp and adjacent beach areas as specified in the Aquatic Lease (Attachment A to this Consent Decree) under sections 2.2 Restrictions on Use, 8.2 Use of Hazardous Substances, and 8.6 Cleanup.

e. Within thirty days of the entry of this Consent Decree, Buse will amend its SWPPP to include (1) a description of log float beach and ramp areas and activities, and (2) a listing of potential pollutant sources attributable to activity.

f. Buse will maintain the non-paved temporary log storage area west of the ramp, where stormwater runoff drains into the Buse facility, applicable BMPs specified in the Ecology's "Draft 2013 Implementation Manual for Log Yards."

g. Buse will resume quarterly sampling at DP-1 for all parameters immediately. The sample taken on Jan 19, 2016 may be the first sample.

h. Within thirty days of the entry of this Consent Decree, Buse will revise description of DP-1 sampling point in its SWPPP to note that the sampling point is only appropriate when the sampler employs a substantial reach with a sampling pole approximately 8 feet up the north ditch from the tide gate to avoid comingling of

1 sample with discharge from the swirling confluence with the south ditch and effluent
2 from the west ditch.

3 i. Buse will properly maintain, replace and dispose of soiled surface booms and
4 include in its SWPPP a schedule for replacing the boom as necessary, but no less
5 frequently than every year, and properly disposing of soiled booms.

6 j. Within thirty days of the entry of this Consent Decree, Buse will update the
7 Facility's SWPPP to include a description of the berm on the southern border of the
8 facility and engineer approval of the berm. Buse will include in its SWPPP and at a
9 minimum employ the following berm-specific BMPs to ensure that no runoff from
10 Buse's yard enters the south ditch:

11 i. Closely inspect the south log yard and berm monthly for signs of
12 deterioration and/or seepage to ensure berm is maintained and
13 vegetated/stabilized;

14 ii. Keep equipment and facility operations a safe distance away from the
15 berm to prevent impacting or damaging the berm;

16 iii. Repair berm immediately if damaged or inspections reveal signs of
17 deterioration;

18 iv. Maintain full vegetative coverage or other form of stabilization of
19 berm and buffer area. Replant vegetation as needed in the event of
20 damage or die-off;

21 v. Maintain berm at a sufficient height to prevent overflow and seepage.

k. Within thirty days of the entry of this Consent Decree, Buse will replace the silt curtains and update its SWPPP to include regular silt curtain inspection and the following BMPs:

- i. Clean or replace silt curtains immediately if inspection and/or benchmark exceedance reveals the need to do so;
- ii. Include detailed silt curtain cleaning and replacement procedures in SWPPP to adequately protect against illicit discharge of solids in north ditch during silt curtain cleaning and replacement and require proper disposal of used silt curtains.

1. Within thirty days of the entry of this Consent Decree, Buse will provide a copy of the updated SWPPP to Soundkeeper for comments. Within thirty (30) days receipt of Soundkeeper's comments, Buse will make a good faith effort to respond and further revise the SWPPP as Buse's stormwater consultant deems appropriate.

m. Buse will, for a period of three (3) years beginning on the date that this Consent Decree is entered by the Court, forward copies to Soundkeeper of all written or electronic communications between it and Ecology related to the NPDES permit, the Clean Water Act, and stormwater discharges from the Facility. During this same period, Buse shall forward copies to Soundkeeper of all inspection reports and/or checklists of all visual monitoring conducted at the Facility pursuant to the terms and conditions of the NPDES permit. All copies shall be forwarded electronically to Soundkeeper on a quarterly basis and not later than the forty-fifth (45th) day following the end of each calendar quarter.

1 8. Not later than seven (7) days after the entry of this Consent Decree by this Court,
2 Buse will pay four thousand dollars (\$4,000) to the Rose Foundation for Communities and the
3 Environment for a project or projects to improve or protect the water quality of Puget Sound as
4 described in **Attachment B** this Consent Decree. Checks will be made to the order of and delivered
5 to: The Rose Foundation for Communities and the Environment. Payment will include the following
6 reference in a cover letter or on the check: "Consent Decree, Puget Soundkeeper Alliance v. Buse
7 Timber & Sales, Inc." A copy of the check and cover letter, if any, will be sent simultaneously to
8 Puget Soundkeeper Alliance and its counsel.

9 9. Within seven (7) days of entry of this Consent Decree by the Court, Buse shall
10 pay Puget Soundkeeper Alliance's actual litigation fees, expenses, and costs (including
11 reasonable attorney and expert witness fees) incurred in this matter in the amount of forty
12 thousand dollars (\$40,000) by check payable and mailed to Smith & Lowney, PLLC, 2317 East
13 John St., Seattle, WA 98112, attn: Richard A. Smith. Buse's payment shall be in full and
14 complete satisfaction of any claims Puget Soundkeeper Alliance has or may have, either legal or
15 equitable, and of any kind or nature whatsoever, for fees, expenses, and costs incurred in the
16 litigation.

17 10. A force majeure event is any event outside the reasonable control of Buse that
18 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.
19 Delay in performance of a task required by this decree caused by a force majeure event is not a
20 failure to comply with the terms of this decree, provided that Buse notifies Puget Soundkeeper
21 Alliance of the event; the steps that Buse will take to perform the task; the projected time that
22 will be needed to complete the task; and the measures that have been taken or will be taken to
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1 prevent or minimize any impacts to stormwater quality resulting from delay in completing the
2 task.

3 Buse will notify Puget Soundkeeper Alliance of the occurrence of a force majeure event as
4 soon as reasonably possible but, in any case, no later than thirty days after the occurrence of the
5 event. In such event, the time for performance of the task will be extended for a reasonable period of
6 time following the force majeure event.

7 By way of example and not limitation, force majeure events include

- 8 a. Acts of God, war, insurrection, or civil disturbance;
- 9 b. Earthquakes, landslides, fire, floods;
- 10 c. Actions or inactions of third parties over which Buse has no control;
- 11 d. Unusually adverse weather conditions;
- 12 e. Restraint by court order or order of public authority;
- 13 f. Strikes;
- 14 g. Any permit or other approval sought by Buse from a government authority to
15 implement any of the actions required by this consent decree where such
16 approval is not granted or is delayed, and where Buse has timely and in good
17 faith sought the permit or approval; and
- 18 h. Litigation, arbitration, or mediation that causes delay.

21 11. This Court retains jurisdiction over this matter. And, while this Decree remains in
22 force, this case may be reopened without filing fee so that the parties may apply to the Court for any
23 further order that may be necessary to enforce compliance with this decree or to resolve any dispute
24 regarding the terms or conditions of this Decree. In the event of a dispute regarding implementation
25 of, or compliance with, this Decree, the parties must first attempt to resolve the dispute by meeting to
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1 discuss the dispute and any suggested measures for resolving the dispute as provided in section 17 of
2 this Decree. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d),
3 regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to any
4 prevailing or substantially prevailing party, will apply to any proceedings seeking to enforce the
5 terms and conditions of this Consent Decree.
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7 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
8 can be entered in a Clean Water Act suit in which the United States is not a party prior to 45 days
9 following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and
10 the Administrator of the U.S. Environmental Protection Agency (EPA). Therefore, upon the filing of
11 this Consent Decree by the parties, Puget Soundkeeper Alliance will serve copies of it upon the
12 Administrator of the EPA and the Attorney General, with copy to Buse.
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14 13. This Consent Decree will take effect upon entry by this Court. It terminates three (3)
15 years after that date, or 90 days after the parties' completion of all obligations imposed by this
16 Decree, whichever is later.
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18 14. Both parties have participated in drafting this decree.
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20 15. This Consent Decree may be modified only upon the approval of the Court.
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22 16. If for any reason the court should decline to approve this Consent Decree in the form
23 presented, this Consent Decree is voidable at the discretion of either party. The parties agree to
24 continue negotiations in good faith in an attempt to cure any objection raised by the court to entry of
25 this Consent Decree.
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27 17. Notifications required by this Consent Decree must be in writing. The sending party
28 may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified
29 mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized overnight

courier, with all fees prepaid; or (4) e-mail. For a notice or other communication regarding this decree to be valid, it must be delivered to the receiving party at the one or more addresses listed below or to any other address designated by the receiving party in a notice in accordance with this paragraph 17.

if to Puget Soundkeeper Alliance:

Katelyn Kinn

and to:

Richard Smith
Smith & Lowney PLLC
2317 East John St.
Seattle, WA 98112
email: rasmithwa@igc.org

if to Buse:

Tom Parks

and to:

Mike Gossler
Montgomery Purdue Blankinship & Austin PLLC
701 Fifth Avenue, Suite 5500
Seattle, Washington 98104

A notice or other communication regarding this Consent Decree will be effective when received unless the notice or other communication is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day. A notice or other communication will be deemed to have been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing notice or other communication regarding this Consent Decree.

CONSENT DECREE - 10
CASE No. 2:15-cv-01460-MJP

1 DATED this 6th day of July, 2016.
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9 Marsha J. Pechman
10 United States District Judge
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13 Presented by:
14

15 MONTGOMERY PURDUE
16 BLANKINSHIP & AUSTIN PLLC
17

SMITH & LOWNEY, PLLC

18 By _____
19 Michael E. Gossler WSBA #11044
20 Attorneys for Defendant Buse Timber &
21 Sales, Inc.
22

23 By _____
24 Richard A. Smith WSBA #21788
25 Meredith A. Crafton WSBA #46558
26 Attorneys for Plaintiff
27 Puget Soundkeeper Alliance
28